

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.56 OF 2002

1. M/s. Mineira Nacional
Limitada, by its Mana-
ging Director
Shri Anil Salgaokar;

2. Shri Anil Vassudev
Salgaokar, of major age,
Mine owner;

both having office at
Salgaocar Chambers,
Gosalia Building,
Margao, Goa

... PETITIONERS

VERSUS

1. Shri Rajan Ragunathrao
Dessai, major, married,
residing at Flat No.1,
Ground floor, Building No.3
Damodar Housing Society,
Aquem Alto, Margao, Goa;

2. Mrs. Sangita Ranesardesai

3. Shri Udaysingh Ranesardesai
both residents of Margao,
Goa

... RESPONDENTS.

Mr. A.N.S. Nadkarni, Advocate General, and Mr.M.S.
Sonak, Advocate, for the Petitioners.

Mr. M.S. Usgaonkar, Sr. Advocate, with Mr. Sudesh
Usgaonkar, Advocate, for the Respondent No.1.

Mr. J.A. Barreto, Advocate, for the Respondents No.2
and 3.

CORAM : V.C. DAGA, J.

DATED : JUNE 20, 2002.

ORAL ORDER

Heard the learned Counsel appearing for rival parties.

2. The contention sought to be raised is that the compromise decree cannot be said to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure ("the Code" for short). As such it cannot be executed under Order 21 of the Code.

3. The learned Counsel for the Petitioners relied on Section 33 of the Code to borrow support to this submission. The submission is, in view of the mandate of Section 33 of the Code, decree as contemplated under Section 2(2) of the Code can follow only after the pronouncement of the judgment by the Court, which can only be done after the case has been heard by the Court on merits. In case of compromise, the question of hearing of the case on merits and pronouncement of the judgment by the Court does not arise for want of contest. As such, no decree as contemplated under Section 2(2) of the Code takes birth. In this backdrop, the submission as spelt out in the opening part of this para is that the decree which is sought to be executed being

a compromise decree, it is not executable as any other decree passed on contest.

4. The learned Counsel for the Petitioner tried to find fault with the impugned Order which holds that the compromise decree is at par with any other decree passed on contest. In my opinion, the submission put forth is devoid of any substance.

5. A reading of Rule 3 of Order 21 would show that the power of adjudication is very well vested in it and a decree, even on compromise, can be passed only in exercise of adjudicatory powers of the Court. No doubt that the direction contained in Order 21, Rule 3 is mandatory, one that the Court shall pass a decree according to compromise. Thus, before passing a decree, though on a compromise petition, the adjudicatory powers of the Court have to be exercised and the resultant decree would therefore be an expression of such an adjudication and hence compromise decree falls within the ambit of Section 2(2) of the Code.

6. In the case of **V.N. Sreedharan v. Bhaskaran** (AIR 1986 Kerala 49), the Kerala High Court had occasion to consider the identical

submissions and the same were dealt with in the following words:-

" As for the executability of the compromise decree, the learned counsel has argued that Order 21, Rule 2 of the Civil Procedure Code envisages only a decree as defined in the Code to be capable of execution, and that since the compromise decree is not the result of an adjudicatory process, the same is not a decree as defined in S.2(2) of the Civil Procedure Code. According to him, a compromise decree only contains the terms of an agreement arrived at by the parties and the role of the Court is only to record the agreement and hence there is no adjudicatory exercise involved in passing a decree thereon. The thrust of his argument is that when a decree is not the result of an application of the mind of the Court regarding the points of controversy between the parties, it cannot be treated as a decree coming within the ambit of S.2(2) of the Code. Order 21 Rule 3 of the Code deals with the power of a Court to pass a decree in cases where the parties have agreed to compromise the suit. A reading of that Rule would show that the power of adjudication is very well vested in it and a decree, even on a compromise, can be passed only in exercise of adjudicatory powers of the Court. No doubt that the direction contained in Order 21 Rule 3 is of a mandatory tone that the Court "shall pass a decree in accordance with the compromise". But

before passing such a decree, the Court has to satisfy itself as to three aspects. First is that, it must be proved to the satisfaction of the Court that the suit has been adjusted wholly or in part, and the second is that, the adjustment is by way of a lawful agreement or compromise, and the third is that the agreement or compromise is in writing and the same has been signed by the parties. Only on satisfaction of the above three conditions that the Court is vested with the jurisdiction to pass a decree in accordance therewith. If the Court is of opinion that all or any of the terms of the compromise or agreement is opposed to public policy or is intended to defeat any provision of law, then the Court has the power to refuse to pass a decree in accordance with that compromise. Similarly, if the Court has some doubt about the genuineness of the signature of the parties in the petition or doubt that the signature has not been obtained after the compromise terms were reduced to writing, then also the Court is not obliged to pass a decree. Thus, before passing a decree, though on a compromise petition, the adjudicatory powers of the court have to be exercised and the resultant decree would therefore be an expression of such an adjudication and hence such a decree falls within the ambit of S.2(2) of the Code.

7. It is appropriate at this stage to quote the words of Narendran, J. in **Gopinathan Nair v. Madhavan** [ILR (1984) 1 Ker 464]:

" A decree is the fruit of a litigation. The rights under a decree have to be realised by execution unless the party liable readily discharges his obligation under the decree. A compromise decree is also a decree. In the normal course, parties fight to the last and the Court is called upon to give a decision on the issues involved. But when the parties compromise, the Court disposes of the suit in terms of the compromise. Simply because a decree is a compromise decree, it cannot be said that the decree is not executable. It cannot also be said that unless there is a direction in the compromise decree, to execute and realise the right conferred by the decree, the decree cannot be executed. "

8. A dissection of the provisions of Order 23(3) of the Code would show that it specifically lays down:

"Where it is proved to the satisfaction of the Court that the suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith."

9. The factum of recording agreement or

compromise or satisfaction by the Court in pursuance of the compromise and agreement between the parties superimposed with the seal of the Court, but once this formality is over, then what is required is the exercise of adjudicatory power of the Court for passing and drawing a decree in accordance with the said agreement or compromise between the parties recorded by the Court. The resultant decree would therefore be an expression of such an adjudication. As such, compromise decree would be well within the ambit of Section 2(2) of the Code. Such a decree though is termed as a compromise decree, is very much a decree at par with any other decree on contest and is very much executable in the eye of law as per the procedure laid down under the provisions of the Code.

10. In this connection, it is useful to refer to the observation of B.P. Sinha, J. (as he then was), in a Patna decision in **Bilas Devi v. Bansidhar Sahu** (AIR 1951 Pat 459):

"On general principles also, it is in my opinion, more consistent with reason and public policy that a compromise of the nature entered into by the parties in this case should be enforced by execution instead of compelling the decree-holder

to take recourse to a separate suit because a person in the position of the applt, who is a dependent member in a joint Hindu family, should not be compelled to incur further costs upon fresh litigation. The Court is always in favour of construing a compromise in a manner which tends to shorten litigation and the Court will always resist any attempt on the part of any of the parties to construe the decree in such a way as to multiply litigation."

11. In the above view of the matter, no case is made out to entertain this Revision and the same is dismissed in limine with no order as to costs.

12. Needless to mention that the interim relief, if any, shall stand automatically vacated with the dismissal of this Revision.

V.C. DAGA, J.

ac.